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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-115
FM Table of Allotments, FM Broadcast Stations	)	RM-10926
(Huntsville, Missouri)	)	

TO: Audio Division

COMMENTS OF KIRK, L.L.C. IN OPPOSITION TO RECLASSIFICATION OF CHANNEL

KIRK, L.L.C. (hereinafter "KIRK"), by its attorney, hereby respectfully submits the following comments in opposition to the reclassification of Channel 278C2, Huntsville, Missouri, from a commercial channel to a reserved, non-commercial channel (hereinafter "NCE").

I. Commentator and Its Interest in This Proceeding

1. The principles of KIRK have long been aware of the existence of channel 278C2 at Huntsville, Missouri. In fact, a construction permit for this channel was held for a considerable period of time by a company controlled by Michael Rice. The construction permit was revoked when other authorizations held by Rice were also revoked, due to a serious criminal conviction.

2. The principles of KIRK were aware of these circumstances and have long intended to vigorously bid for the channel when it was put up at auction. In this proceeding, however, the Commission proposes to reclassify the channel from a commercial channel to a non-commercial educational channel. KIRK opposes this

reclassification. As we will show, the channel does not qualify for non-commercial status.

II. Channel 278C2 at Huntsville, Missouri Does Not Qualify for Reclassification As a Reserved Channel

3. The standards for reclassification of commercial channels to NCE status are set forth in a *Second Report and Order*, issued last year and published at 18 FCC Rcd 6691. *Reexamination of the Comparative Standards of Non-Commercial Applicants ("NCE Order")*, 18 FCC Rcd 6691 (2003).

4. The Commission has determined that a vacant FM allotment may be reserved for NCE broadcasting if both of the following two conditions are satisfied:

a. Under-Served Population. A maximum class facility built at the commercial allotment reference coordinates would provide first or second NCE service to at least ten percent of the population within its service area. At least 2,000 persons must receive first or second NCE service. *NCE Order*, 18 FCC 6691, at para. 34; and

b. Technical Preclusion Showing. No reserved band frequency is available which could be used to cover the under-served population identified in Step One. The *Second Report and Order* suggests a test procedure using five sites that is "designed to provide a reliable and efficient proxy of technical preclusion." Paragraph 35 further states, "It is not a conclusive test, but one that the Commission will treat as establishing a rebuttable presumption of technical preclusion." *NCE Order*, 18 FCC 6691, at para. 35-36.

5. While paragraphs 35 and 36 of the *NCE Order* provide a permissible mechanism for reclassification of a commercial channel to NCE status, paragraph 37

provides a procedure for conclusively rebutting reclassification requests. Paragraph 37 states, in pertinent part, that,

> ". . . A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities would satisfy the 'first or second service' criterion. "

NCE Order, 18 FCC 6691, at para. 37.

5. In this particular case, the reclassification of the Huntsville channel was requested in a petition filed by the American Family Association. The Petitioner purported to show that no reserved channel could be used for the proposed facility at any of the five (5) tested sites. However, American Family is mistaken.

6. As shown in the attached Engineering Report, prepared by Munn-Reese, Inc., at least two (2) channels can be utilized in the reserved portion of the band from the transmitter site situated in the center of Huntsville, Missouri. Moreover, each of these transmitter sites will provide coverage of the required white and gray NCE service areas. Therefore, the Huntsville channel does not qualify for reclassification, and must remain a commercial channel, subject to auction at the next available opportunity.

III. Other Matters

8. KIRK is today filing an Opposition to the proposed reclassification of Channel 247C3 at Madison, Missouri, a reclassification also requested by American Family Association.

9. At least one (1) of the two (2) channels suggested by KIRK as alternate channels at Huntsville, Missouri can be allocated in the reserved portion of the band, and

will still be compatible with the allocation of the channel which KIRK is proposing as an alternate at Madison, Missouri. Therefore, KIRK's suggestions for Huntsville and Madison are consistent and can be accommodated without any conflict.

WHEREFORE, the premises considered, KIRK respectfully opposes reclassification of channel 278C2 at Huntsville, Missouri, from a commercial channel to an NCE channel.

Respectfully submitted,

KIRK, L.L.C.

May 14, 2004

By: _____
Lauren A. Colby
Its Attorney

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

ENGINEERING REPORT

Statement of NCE Alternate Channel Reservation

Concerning

Allocated Channel CH278C2 – Huntsville, MO

April, 2004

MUNN–REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

DISCUSSION

The firm of Munn-Reese, Inc., was retained to prepare this report analyzing the potential for the reservation of Allocation Channel CH278C2, Huntsville, Missouri for non-commercial use. The methodology used in this determination has been taken from MM Docket No. 95-31, Second Report and Order, concerning the Reexamination of the Comparative Standard for Non-Commercial Education Applicants. Based on paragraphs 33 through 38 of the Second Report and Order, the Huntsville CH278C2 allotment may not be reserved for NCE use because two current reserved band channels (CH204C2 or CH206C2) are allocable with minimum Class C2 facilities.

The Commission has determined that a vacant FM allotment can be reserved for NCE broadcasting if both of the following two conditions are satisfied:

1. Under-Served Population. A maximum class facility built at the allotment site would provide first or second NCE service to at least ten percent of the population within its service area. At least 2000 persons must receive first or second NCE service. *Second Report and Order*, 18 FCC 6691, at para. 34, March 4, 2003.

2. Technical Preclusion Showing. No reserved band frequency is available which could be used to cover the under-served population identified in Step One (testing from five different sites). *Second Report and Order*, 18 FCC 6691, at para. 35-36, March 4, 2003.

A Petition filed by the American Family Association purports to show no reserved band frequency is available for a Class C2 facility at any of the five sites. However, it has been determined two suitable reserved band channels are available at one of the sites: the center of the community of Huntsville.

Exhibit(s) 1.1 and ***1.2*** are NCE allocation studies for CH204C2 and CH206C2 respectively. Both studies have been conducted from the city reference coordinates of Huntsville, Missouri in accordance with paragraph 35 of the Second Report and Order. Minimum Class C2 parameters of 25.5 kW ERP (elliptical polarization) at 30 meters HAAT have been employed in accordance with §73.211(a)(1)(v), §73.211(b)(1)(i), and §73.212(a) for both CH204C2 and CH206C2. An identical directional pattern in accordance with §73.316 has been employed for both CH204C2 and CH206C2. A copy of the common pattern has been included in ***Exhibit 2.1***. Finally, the transmitter site is within the affected radius of one Channel 6 television station. However, full protection would be afforded the TV-6 station under the provisions of §73.525. ***Exhibits(s) 3.1*** and ***3.2*** are Channel 6 interference studies showing compliance with the Rules for both operations.

DISCUSSION (continued)

The availability of the two reserved band channels triggers a "first or second" NCE service study as dictated by paragraph 36. Paragraph 36 states: "In the event that an NCE station can be licensed on one or more channels at any of these five sites in compliance with the NCE technical rules, the reservation showing must undertake a 'first or second service' analysis of the technically acceptable facilities at each acceptable site. If any analyzed facility would satisfy the 'first or second service' criterion, the allotment will not be reserved." *Second Report and* Order, at para. 36.

However, Paragrah 37 clearly states the designated reservation procedure is rebuttable. "A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities would satisfy the 'first or second service' criterion." *Second Report and* Order, at para. 37.

Therefore, the present Petition for Rulemaking is directly dependent on the "first or second service" requirement. Analysis of the minimum Class CH204C2 and CH206C2 facility 60 dBu contours[1] yields a first or second NCE service population of 9,908 people, as seen in ***Exhibit 4.1***. The petitioner computed a total population within the maximum class Channel CH278C2 facility of 83,671 people. Thus, the "first or second service" population covered by the reserved channel facilities is 11.84% of the population in the Channel CH278C2 allotment.

Therefore, the CH278C2 Allotment for Huntsville, Missouri fails the criteria for NCE channel reservation because alternate channels exist in the reserved band, and these channels are capable of providing adequate first or second NCE service.

CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report. I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

May 4, 2004

MUNN-REESE, INC.

By: _____
Wayne S. Reese, President

385 Airport Drive, PO Box 220
Coldwater, Michigan 49036
Telephone: 517-278-7339

By: _____
Justin W. Asher, Project Engineer

[1] Since the facilities are identical, the 60 dBu service contours will also be identical.

Exhibit 1.1
Tabulation of CH204C2 Allocation

REFERENCE — CH# 204C2- 88.7 MHz, Pwr= 25.5 kW, HAAT=30.0M, COR= 266 M — DISPLAY DATES
Min Class C2 Operating Parameters of 25.5 kW at 30 meters HAAT
39 26 26 N — Average Protected F(50-50)= 22.8 km — DATA 04-17-04
92 32 41 W — Ave. F(50-10) 40 dBu= 100.3 54 dBu= 35.8 80 dBu= 7.1 100 dBu= 2.3 — SEARCH 04-26-04

CH CALL / CITY	TYPE / STATE	AZI. <--	DIST / FILE #	LAT. / LNG.	Pwr(kW) / HAAT(M)	COR(M) / INT(km)	PRO(km) / LICENSEE	*IN* (Overlap in km)	*OUT*
204A KTRM	LIC CN	358.0	81.90	40 10 40	1	329	17.1	24.63	3.99
Kirksville	MO	178.0	BLED19980217KE	92 34 40	38	40.2	Truman State University		
203B WGCAFM	LIC CN	60.0	119.83	39 58 18	40	325	19.2	23.73	39.47
Quincy	IL	240.0	BLED19870930KA	91 19 42	163	76.9	Great Commission Broadcast		
205C2 KRNW	LIC CN	295.2	98.87	39 48 48	38	382	21.4	1.71	16.00
Chillicothe	MO	115.2	BLED19931006KB	93 35 26	160	75.8	Northwest Missouri State U		
205C2 KJLU	LIC CN	165.7	112.52	38 27 29	29.5	386	22.8	16.22	26.98
Jefferson City	MO	345.7	BLED19951215KB	92 13 32	168	73.5	Lincoln University Of Miss		
204B WSIE	LIC DEN	107.5	232.96	38 47 06	7.74	302	22.8	108.61	93.94
Edwardsville	IL	287.5	BLED19860115KB	89 59 10	174	101.6	Board Of Trustees, S. Illi		
201A KCOU	LIC HN	160.9	58.83	38 56 23	0.43	260	22.8	34.60	46.33
Columbia	MO	340.9	BLED1587	92 19 20	46	1.5	The Curators Of The Univer		
202A KJABFM	LIC CN	117.6	63.83	39 10 24	6	281	22.8	39.39	45.01
Mexico	MO	297.6	BLED19990406KA	91 53 22	33	1.7	Mexico Educational Broadca		
202A KJABFM	APP VX	123.5	67.54	39 06 13	4.8	332	22.8	42.39	40.93
Mexico	MO	303.5	BPED20030930AHQ	91 53 35	81	2.4	Mexico Educational Bcstng		
202A KJABFM	APP VX	123.5	67.54	39 06 13	4.8	332	22.8	42.39	40.93
Mexico	MO	303.5	BPED20030930AHQ	91 53 35	81	2.4	Mexico Educational Bcstng		
203C1 KLJC	LIC DCN	256.9	172.36	39 04 24	15.798	491	26.6	74.34	81.99
Kansas City	MO	76.9	BLED19910315KA	94 29 06	217	71.4	Calvary Bible College		
203C1 KUMR	LIC CX	158.4	195.74	37 47 56	100	471	22.8	85.04	101.58
Rolla	MO	338.4	BMLED20020910AAD	91 43 28	149	87.9	University Of Missouri		
204A KIGC	LIC HN	357.6	207.80	41 18 37	0.23	275	17.1	161.18	132.06
Oskaloosa	IA	177.6	BLED19910204KF	92 38 49	48	29.5	William Penn College		
06Z2E KMOSTV	LI HY	197.2	94.58	38 37 36	100	864	281.6	To Grd B=	-32.82
Sedalia	MO	17.2	BLET20010926ACE	92 52 03	589		Board Of Governors Of Cent		

ERP and HAAT are on direct line to and from reference station.
"*"Affixed to 'IN' or 'Out' values = site inside protected contour.

Maps of Contour Protections will be supplied upon request.

MUNN–REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

Exhibit 1.2
Tabulation of CH206C2 Allocation

REFERENCE — CH# 206C2- 89.1 MHz, Pwr= 25.5 kW, HAAT=30.0M, COR= 266 M — DISPLAY DATES

39 26 26 N — Average Protected F(50-50)= 22.8 km — DATA 04-17-04
92 32 41 W — Ave. F(50-10) 40 dBu= 100.3 54 dBu= 35.8 80 dBu= 7.1 100 dBu= 2.3 — SEARCH 04-26-04

CH CALL / CITY	TYPE / STATE	AZI. <-- / FILE #	LAT. / LNG.	Pwr(kW) / HAAT(M)	COR(M) / INT(km)	PRO(km) / LICENSEE	*IN* / *OUT* (Overlap in km)
205C2 KRNW Chillicothe	LIC CN MO	295.2 98.87 115.2 BLED19931006KB	39 48 48 93 35 26	38 160	382 75.8	21.4 Northwest Missouri State U	1.71 16.00
205C2 KJLU Jefferson City	LIC CN MO	165.7 112.52 345.7 BLED19951215KB	38 27 29 92 13 32	29.5 168	386 73.5	22.8 Lincoln University Of Miss	16.22 26.98
206C3 950213 Ottumwa	APP CN IA	5.0 169.49 185.0 BPED19950213MB	40 57 40 92 22 11	13.5 129	368 105.1	18.5 Iowa St Un Of Science & Te	45.92 62.61
207B WIPA Pittsfield	LIC DCN IL	78.2 162.77 258.2 BLED19921221KB	39 43 25 90 41 09	50 102	316 70.1	21.3 University Of Il At Spring	71.40 85.24
208C2 KOPN Columbia	LIC CN MO	148.5 57.59 328.5 BLED19930203KA	38 59 53 92 11 48	36 62	325 3.5	22.8 New Wave Corporation	31.27 20.89
260C3 KIRK Macon One-step application from Channel 260A.	LIC CN MO	352.2 17.93 172.2 BLH19980625KA	39 36 02 92 34 24	12.5 143	371 43.4	16.0 Kirk, L.l.c.	17.0R 0.9M
206C2 KCLC St. Charles	LIC DC MO	111.8 191.14 291.8 BLED20000720AAH	38 47 05 90 30 05	35 78	214 117.9	22.8 Lindenwood College	50.49 53.13
206C KWFC Springfield From Channel 206C1-Amended 971017	LIC DCY MO	188.1 250.94 8.1 BLED19980501KA	37 12 06 92 56 33	56.745 350	782 164.6	22.8 Baptist Bible College, Inc	63.56 80.32
206A 950515 Fairfield Amended 950921	APP CN IA	15.3 179.05 195.3 BPED19950515ML	40 59 38 91 58 48	1 52	274 47.6	17.8 American Family Associatio	113.70 97.03
207C1 KCURFM Kansas City	LIC CN MO	257.2 171.70 77.2 BMLED19920728KC	39 04 59 94 28 49	100 233	512 98.4	26.6 Curators Of University Of	46.70 62.87
204A KTRM Kirksville	LIC CN MO	358.0 81.90 178.0 BLED19980217KE	40 10 40 92 34 40	1 38	329 1.6	17.1 Truman State University	63.23 68.90
209A KKTR Kirksville	LIC C MO	358.0 81.90 178.0 BLED20020807AAH	40 10 40 92 34 40	1 38	329 1.6	17.1 Truman State University	63.23 68.90
206C1 AP206 Shenandoah	APP DEX IA	295.0 268.26 115.0 BNPED20000225ACT	40 25 27 95 24 40	100 57	368 138.6	21.4 Csn International	108.28 146.05
06Z2E KMOSTV Sedalia	LI HY MO	197.2 94,58 17.2 BLET20010926ACE	38 37 36 92 52 03	100 589	864	281.6 To Grd B= Board Of Governors Of Cent	-32.82

ERP and HAAT are on direct line to and from reference station.
"*"Affixed to 'IN' or 'Out' values = site inside protected contour.

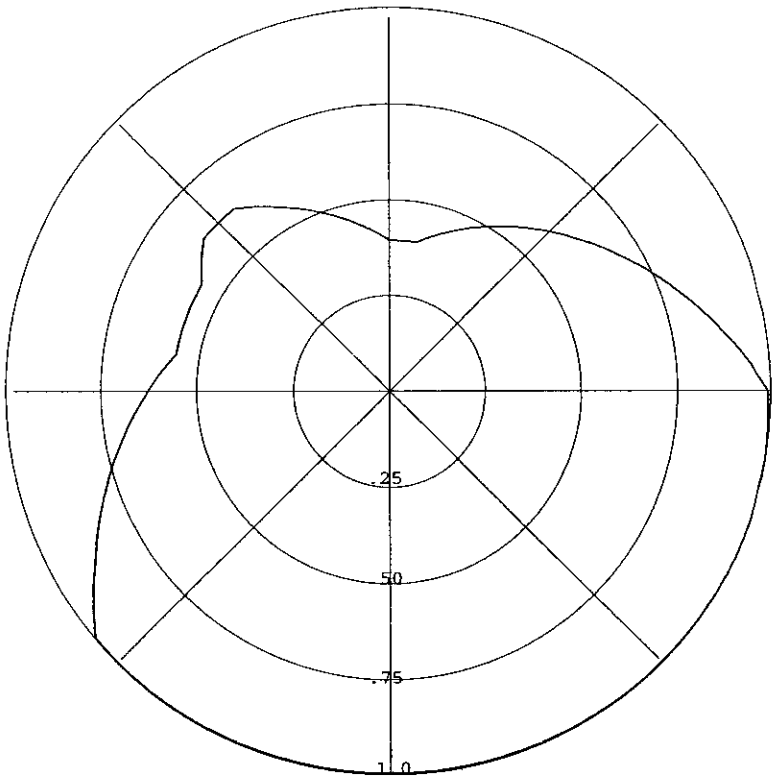
Maps of Contour Protections will be supplied upon request.

MUNN–REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

Exhibit 2.1
Tabulation of Common
CH204C2 and CH206C2 Pattern

04-26-2004

Bearing	Field Value
000	= 0.396
010	= 0.396
020	= 0.443
030	= 0.497
040	= 0.558
050	= 0.626
060	= 0.703
070	= 0.788
080	= 0.885
090	= 0.992
100	= 1.000
110	= 1.000
120	= 1.000
130	= 1.000
140	= 1.000
150	= 1.000
160	= 1.000
170	= 1.000
180	= 1.000
190	= 1.000
200	= 1.000
210	= 1.000
220	= 1.000
230	= 1.000
240	= 0.885
250	= 0.788
260	= 0.703
270	= 0.626
280	= 0.560
290	= 0.560
300	= 0.560
310	= 0.626
320	= 0.626
330	= 0.558
340	= 0.497
350	= 0.443

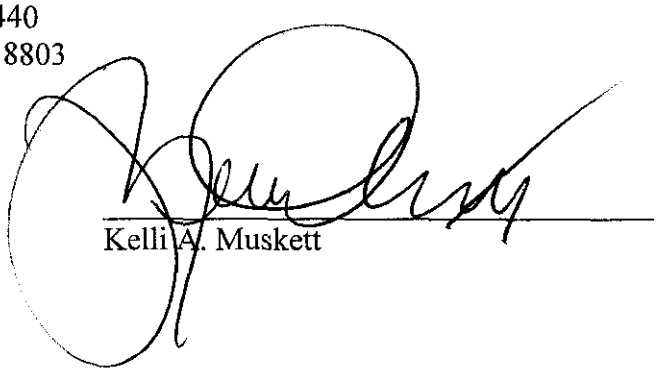


MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036
1(517)278-7339

CERTIFICATE OF SERVICE

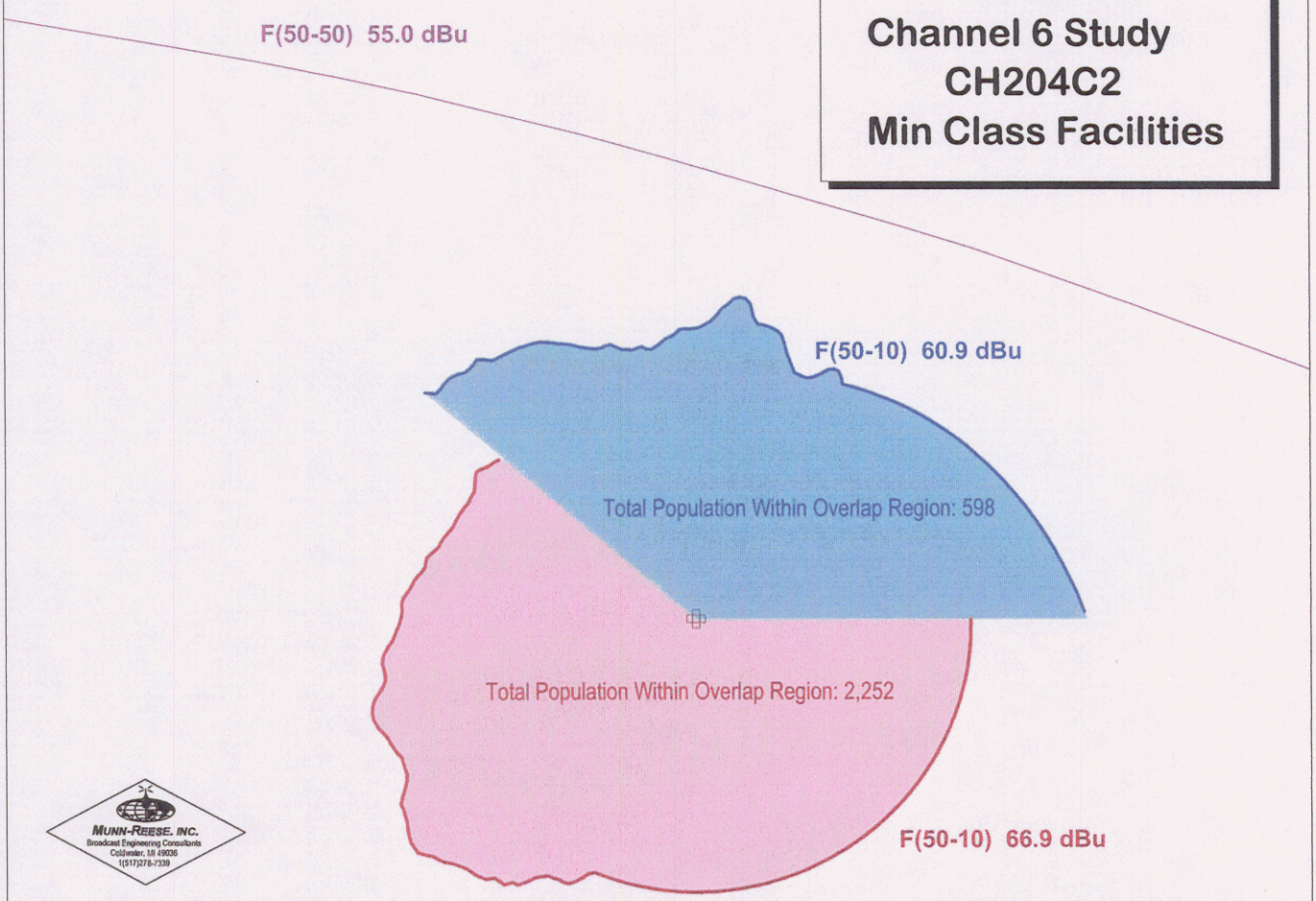
I, Kelli A. Muskett, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 14th day of May, 2004, to the offices of the following:

American Family Association
Post Office Drawer 2440
Tupelo, Mississippi 38803



Kelli A. Muskett

Exhibit 3.1
Channel 6 Study
CH204C2
Min Class Facilities



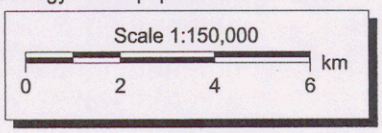
MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036
(517)278-7339

The transmitter site for the use of Channel 204C2, is located within the affected radius of a Channel 6 television station, KMOS-TV, Sedalia, MO. A study has been made of the potential for interference to the reception of this television station, in accordance with the provisions of §73.525 of the Rules. Calculations were done in accordance with §73.525(e), and there is contour overlap between the proposed facility and KMOS-TV. The contours have been plotted on 2000 Census maps. The population affected was determined as specified in the Rules and found to be 2,850 persons.

This FM alternate operation proposes a directional antenna with elliptical polarization of 1 watt horizontal and 25.5 kW vertical. As the FM interference contour does not reach a community of 50,000 persons or more, the power used for the contour calculations was determined as follows. The ERP used for the calculations was determined using the formula of P= H + (V/A) Solving, 0.001+(25.5/40) = 0.639 W. Therefore, P = 0.639 kW, the power used to calculate the distance to the FM interference contour.

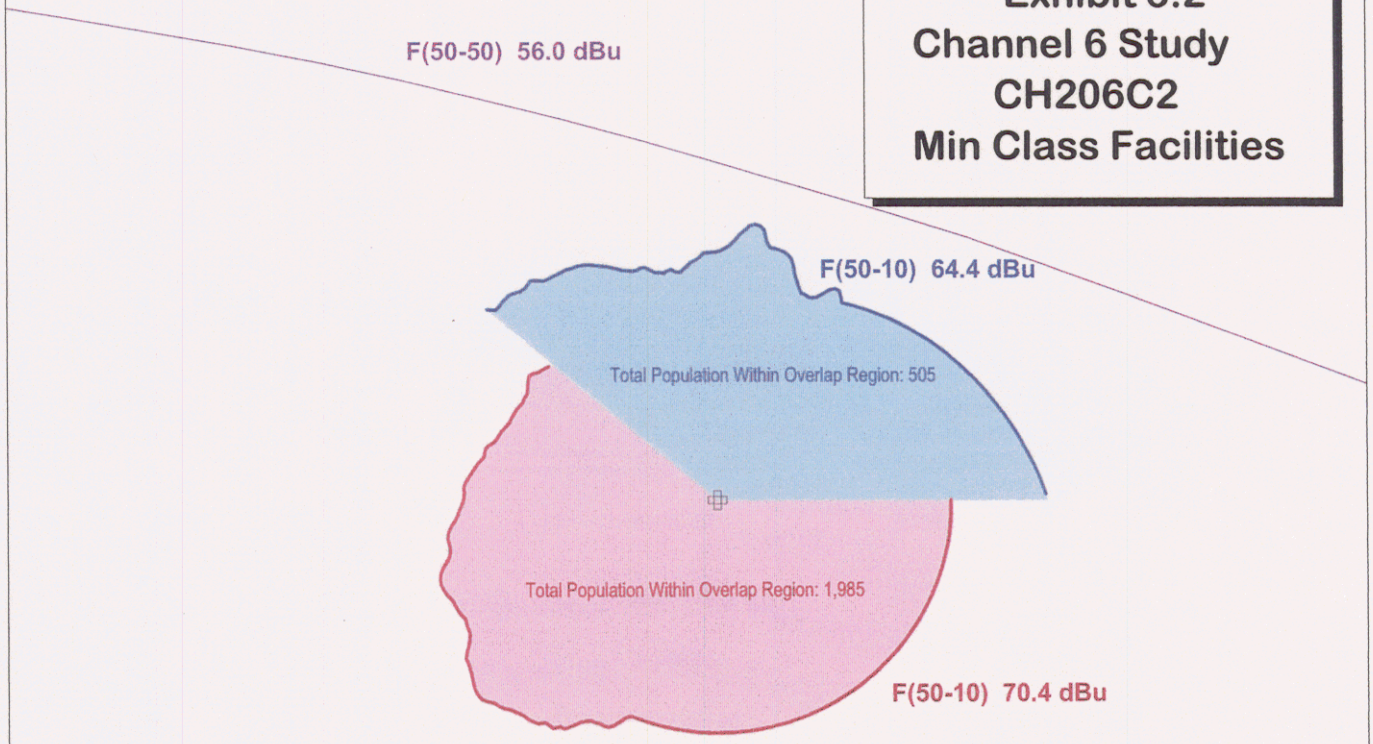
The FM to TV U/D ratio has been determined by reference to 47 C.F.R. §73.599, Figure 2. In accordance with the provisions of §73.525(e)(1)(iii) an adjustment of 6 dB may be made for television reception antenna directivity. This adjustment has been taken.

A Probe II™ map has been included showing the relevant protected contour of KMOS-TV and the corresponding interference contour of the proposed facility. V-Soft Communications has provided the following information regarding this methodology: "This population is obtained through the use of a computer program which extracts a population count based on population centroids defined by U.S. Census 2000 digital census data. This program draws data from the following summary level: State-County-Voting District/Remainder-County Subdivision, Place/Remainder-Census Tract/Block Numbering Area-Block Group."



V-Soft Communications ® ©

Exhibit 3.2
Channel 6 Study
CH206C2
Min Class Facilities



The transmitter site for the use of Channel 206C2, is located within the affected radius of a Channel 6 television station, KMOS-TV, Sedalia, MO. A study has been made of the potential for interference to the reception of this television station, in accordance with the provisions of §73.525 of the Rules. Calculations were done in accordance with §73.525(e), and there is contour overlap between the proposed facility and KMOS-TV. The contours have been plotted on 2000 Census maps. The population affected was determined as specified in the Rules and found to be 2,490 persons.

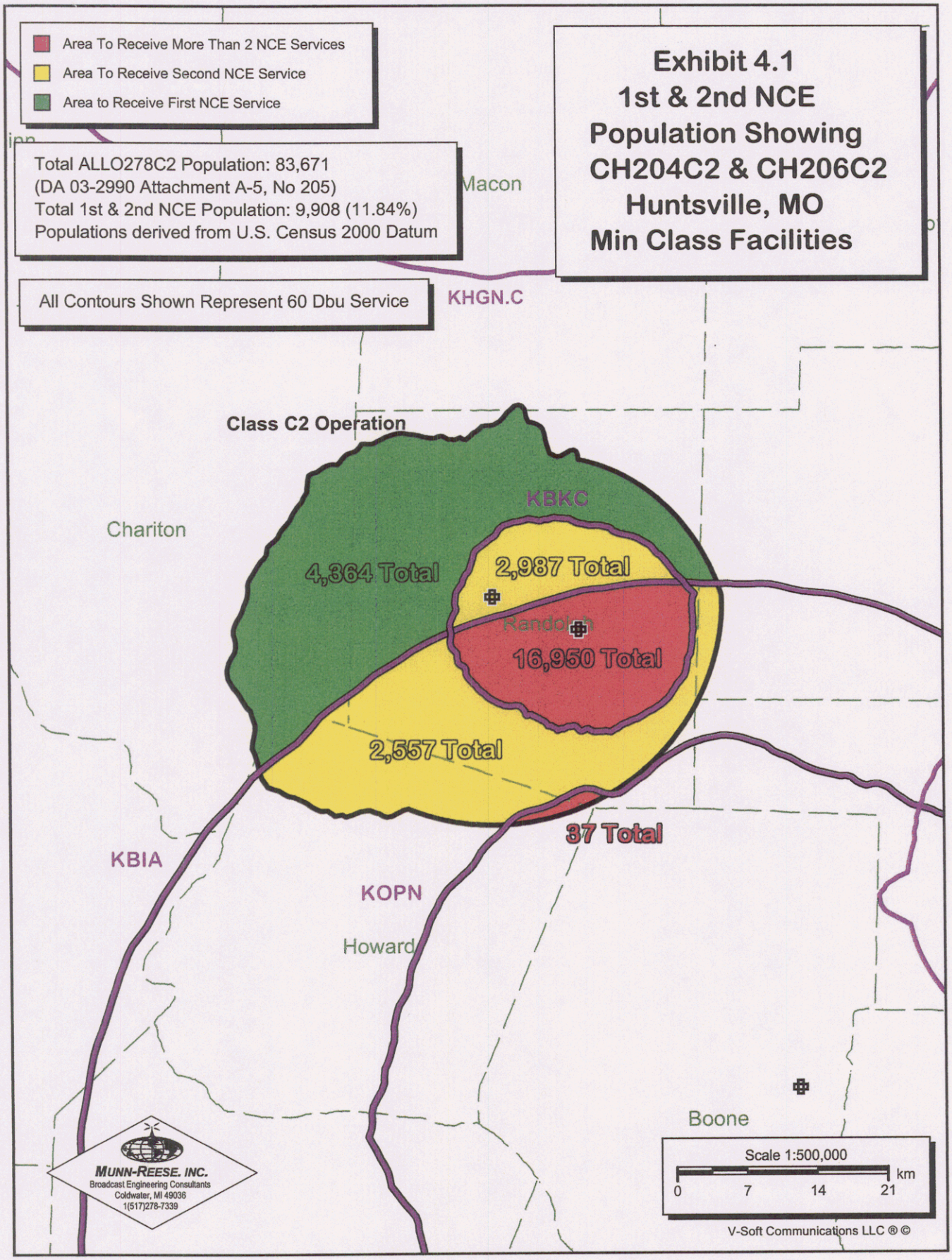
This FM alternate operation proposes a directional antenna with elliptical polarization of 1 watt horizontal and 25.5 kW vertical. As the FM interference contour does not reach a community of 50,000 persons or more, the power used for the contour calculations was determined as follows. The ERP used for the calculations was determined using the formula of P= H + (V/A) Solving, 0.001+(25.5/40) = 0.639 W. Therefore, P = 0.639 kW, the power used to calculate the distance to the FM interference contour.

The FM to TV U/D ratio has been determined by reference to 47 C.F.R. §73.599, Figure 2. In accordance with the provisions of §73.525(e)(1)(iii) an adjustment of 6 dB may be made for television reception antenna directivity. This adjustment has been taken.

A Probe II™ map has been included showing the relevant protected contour of KMOS-TV and the corresponding interference contour of the proposed facility. V-Soft Communications has provided the following information regarding this methodology: "This population is obtained through the use of a computer program which extracts a population count based on population centroids defined by U.S. Census 2000 digital census data. This program draws data from the following summary level: State-County-Voting District/Remainder-County Subdivision, Place/Remainder-Census Tract/Block Numbering Area-Block Group."

Scale 1:150,000

0 2 4 6 km


Area To Receive More Than 2 NCE Services
Area To Receive Second NCE Service
Area to Receive First NCE Service
Exhibit 4.1
1st & 2nd NCE
Population Showing
CH204C2 & CH206C2
Huntsville, MO
Min Class Facilities
Total ALLO278C2 Population: 83,671
(DA 03-2990 Attachment A-5, No 205)
Total 1st & 2nd NCE Population: 9,908 (11.84%)
Populations derived from U.S. Census 2000 Datum
All Contours Shown Represent 60 Dbu Service
Macon
KHGN.C
Class C2 Operation
KBKC
Chariton
4,364 Total
2,987 Total
Randolph
16,950 Total
2,557 Total
37 Total
KBIA
KOPN
Howard
Boone
MUNN-REESE. INC.
Broadcast Engineering Consultants
Coldwater, MI 49036
1(517)278-7339
Scale 1:500,000
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